

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

SHANE ROBERT ERIC MYRES,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 6:13-cv-00262-AC

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on November 12, 2015. Dkt. 47. Judge Acosta recommended that the Court grant Plaintiff's motion for attorney's fees under 42 U.S.C. § 406(b) in the amount of \$23,356.83.¹ Judge Acosta further recommended that if the Ninth Circuit awards Plaintiff attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, Counsel should be ordered to refund the lesser of the two fees to Plaintiff. No party has filed objections.

¹ The Court notes that there were scrivener's errors in the Findings and Recommendation regarding the fee amount sought by Plaintiff. Dkt. 47 at 2, 8, 10. Plaintiff's motion seeks the approval of fees in the amount of \$23,356.83. Dkt. 34 at 2, 5.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Acosta’s Findings and Recommendation, Dkt. 47. Plaintiff’s Motion for Attorney’s Fees under 42 U.S.C. § 406(b) (Dkt. 34) in the amount of \$23,356.83 is GRANTED. If the Ninth Circuit awards Plaintiff attorney’s fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, Counsel is ordered to refund the lesser of the two fees to Plaintiff.

IT IS SO ORDERED.

DATED this 2nd day of December, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge